

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICTOR G. DURAN, JR. and U.S. POSTAL SERVICE,
POST OFFICE, San Antonio, Tex.

*Docket No. 96-1890; Submitted on the Record;
Issued June 26, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record in the present case and finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On January 22, 1995 appellant, then a 54-year-old District Manager, filed a claim for occupational disease alleging that he suffered incapacitating depression and anxiety when he was informed he was to be reassigned to another facility, and his position as District Manager changed, without an opportunity to defend himself. Appellant stopped work on January 4, 1995, the day he was informed of his proposed reassignment. In an August 22, 1995 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that he failed to establish that his emotional condition was sustained in the performance of duty. In merit decisions dated September 13, 1995 and February 29, 1996, the Office denied modification of the August 22, 1995 decision.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an

¹ 5 U.S.C. §§ 8101-8193.

employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.²

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician, when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.³ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁴

Appellant alleged that on December 27, 1994, while he was the District Manager for the San Antonio office, he was told to present himself at the New Orleans office of his superior, Mr. Charles Kernan, Vice President, Southwest Area Operations, on January 4, 1995. Appellant stated that on that date, instead of receiving the vote of confidence he had expected, he "was traumatically shocked" by being "removed" from his position as District Manager without an opportunity to defend himself, was "bombarded by accusations, innuendoes and false information" and was told to go home and call the next day to tell Mr. Kernan where he would like to be reassigned. Appellant concluded that when he called his home office to inform them of his reassignment, he was told that his staff had already been advised of the situation, leaving him feeling "victimized, very angry and in complete despair."

By memorandum and letter dated March 14, 1995, the employing establishment controverted appellant's claim. The employing establishment stated that as Postal Career Executive Service executive, appellant was expected to provide leadership within his span of control, which was the San Antonio District. The employing establishment asserted that during several meetings and phone calls between appellant and Mr. Kernan, concerns were expressed over the negative operating and service trends in appellant's district and other matters within appellant's control. When it became apparent that appellant would not or could not meet the expectations of his superiors, he was offered "an opportunity to participate in the process of identifying an assignment better suited to his ability." The employing establishment concluded that appellant was advised that he was entitled to administrative leave "so that he could concentrate on his career and the direction he wanted to pursue. This approach was followed in lieu of arbitrarily directing him to an assignment without the benefit of his having any input."

Regarding appellant's assertions that his removal from his position by the employing establishment was improper and discriminatory, the Board finds that the employing

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁴ *Id.*

establishment's decision to reassign appellant was an administrative or personnel matter, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of the Act.⁵ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁶ In attempt to corroborate his claim that the employing establishment acted in error and in an abusive manner, appellant submitted evidence that the employing establishment subsequently offered to return him to his former position rather than continue to pursue his reassignment. While the June 23, 1995 letter, from the employing establishment does state that appellant 'should return to duty as District Manager, San Antonio, TX' when medically released to full duty, the employing establishment also stated that in appellant's absence his unit's performance standards had improved in several areas, and put appellant on notice that he would be expected to ensure that improvement continued. Thus, contrary to appellant's assertions, the offer to return him to his original position does not establish that the employing establishment acted in error or abuse when it originally decided to reassign appellant to another area. The Board has recognized that the mere fact that the employing establishment lessens or reduces a disciplinary action or sanction does not establish abuse.⁷ In the present case, the employing establishment sought to reassign appellant on the basis of his performance. While appellant has alleged that his proposed reassignment was abusive he has not submitted evidence to support his allegations in this regard.

Appellant also submitted, in support of his claim, a Management Instruction entitled "Procedure for Removal or Demotion of PCES Executives and Postmasters" which he alleged was totally violated. The Board notes, however, that as appellant was neither removed from employment nor demoted, but was to be reassigned. As appellant did not submit any evidence to support his claim that the employing establishment committed error or abuse in connection with its January 4, 1995 decision, to reassign appellant, he has not established a compensable employment factor under the Act with respect to this administrative matter.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.⁸

⁵ See *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁶ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

⁷ *Barbara Nicholson*, 45 ECAB 803 (1994).

⁸ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The decisions of the Office of Workers' Compensation Programs dated February 29, 1996 and September 13 and August 22, 1995, are affirmed.

Dated, Washington, D.C.
June 26, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member